

**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute a Master Confirmation Agreement with J.P. Morgan Ventures Energy Corporation (EUD)

MEETING DATE: June 17, 2009

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a Master Confirmation Agreement with J.P. Morgan Ventures Energy Corporation (JPMVEC).

BACKGROUND INFORMATION: The Electric Utility Department (EUD) regularly purchases wholesale electric energy from the marketplace in order to stabilize/hedge costs. Such purchases are made pursuant to contracts that have grown in complexity following the 2001 energy crisis in California and as electricity prices have become more volatile.

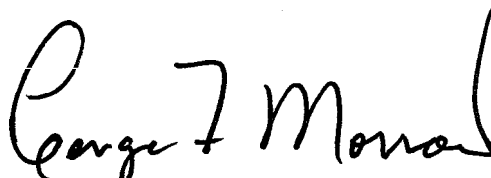
It is now common practice for wholesale electric sellers and buyers to establish master agreements to govern future bilateral transactions. This is prudent from an efficiency standpoint. Market prices for electricity change from moment to moment, making it impractical to negotiate and consummate contracts for short-lived deals.

The proposed Master Confirmation Agreement (and Credit Annex) with J.P. Morgan Ventures Energy Corporation utilizes the Western Systems Power Pool (WSPP) Agreement as a foundation. The WSPP is composed of over 300 members nationally and the core features of the WSPP agreement are time tested and accepted by most parties in the energy marketplace.

It is recommended that the City Council approve execution of a Master Confirmation Agreement with JPMVEC.

FISCAL IMPACT: There is no cost to execute the recommended agreement.

FUNDING: Not applicable.


George F. Morrow
Electric Utility Director

APPROVED: 

Blair King, City Manager

J.P.Morgan

J.P. Morgan
Energy Legal Department
245 Park Avenue – 11th Floor
New York, NY 10167

Karen Harrington
Vice President &
Sr. Documentation Specialist
Phone: (212) 648-0271
Fax: (866) 430-6606

RECEIVED
JUN 01 2009
ELECTRIC UTILITY

May 28, 2009

Via FedEx

Lodi Electric Utility
1331 S. Ham Lane
Lodi, CA 95242
Attn: George F. Morrow, Director
(209) 333-6828

RE: *MASTER CONFIRMATION AGREEMENT dated May 27, 2009 ("WSPP") between J.P. Morgan Ventures Energy Corporation ("JPMVEC") and LODI ELECTRIC UTILITY, CITY OF LODI, CALIFORNIA ("Lodi")*

Dear Mr. Morrow:

Please find enclosed the documents listed below:

1. Partially executed duplicate originals of the referenced WSPP;
2. JPMorgan Chase & Co. ("JPM&C") Guarantee dated May 27, 2009;
3. JPMVEC IRS form W-9;
4. JPMVEC Incumbency Certificate;
5. JPMVEC Certificate of Incorporation and bylaws;
6. JPMVEC Board Resolutions;
7. JPM&C Incumbency Certificate;
8. JPM&C Certificate of Incorporation and bylaws; and
9. JPM&C Signing Authority and Resolutions.

If the documents meet with your approval, please have an authorized officer of Lodi execute the WSPP and send one fully executed original, including the following documents to my attention at the address above:

1. One fully executed original of the referenced WSPP;
2. IRS form W-9;
3. Certified copies of the charter, enabling statutes, and constitution or comparable legislation, creating or authorizing Lodi;
4. Certified copies of the bylaws of Lodi;
5. Certified copies of the Charter and constituent instruments of Lodi;
6. Certified copies of any resolution approving the transactions contemplated by this WSPP and authorizing a specified person or persons to execute and deliver on behalf of Lodi this WSPP; and
7. Amendments to any of the foregoing.

if you should have any questions, please contact me at (212) 648-2071. We look forward to working with you.

Sincerely,



Karen Harrington

Sr. Documentation Specialist

enclosures

**MASTER CONFIRMATION AGREEMENT
UNDER THE WESTERN SYSTEMS POWER POOL AGREEMENT
BETWEEN J.P. MORGAN VENTURES ENERGY CORPORATION AND CITY OF LODI**

This Master Confirmation Agreement under the Western Systems Power Pool Agreement with an effective date of April 1, 2008 (the "WSPP Agreement") sets forth the agreement between **J.P. MORGAN VENTURES ENERGY CORPORATION** ("Counterparty") and **LODI ELECTRIC UTILITY, CITY OF LODI, CALIFORNIA** ("LODI") effective as of May 27, 2009.

WHEREAS, this Master Confirmation Agreement is being provided pursuant to and in accordance with WSPP Agreement;

WHEREAS, this Master Confirmation is being provided pursuant to and in accordance with the WSPP Agreement as if both Parties were members of the Western System Power Pool and the Parties intend to abide by the obligations under the WSPP Agreement as if they were parties thereto but recognizing that LODI is not a member and that it is not intended that it will become a member for purposes of this Master Confirmation Agreement

NOW THEREFORE, in consideration of the mutual consents and agreements contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Counterparty and LODI agree to the following terms and conditions.

GENERAL

This Master Confirmation Agreement shall govern all transactions between the Parties under the WSPP Agreement. By entering into this Master Confirmation Agreement, Counterparty and LODI intend to have these provisions modify, supplement and amend the WSPP Agreement and to have these provisions apply to all Confirmations and transactions between Counterparty and LODI. The WSPP Agreement, as modified, supplemented and amended by this Master Confirmation Agreement, shall be referred to as the "Agreement". Terms used but not defined herein shall have the meanings ascribed to them in the WSPP Agreement. In the event of any conflict between the terms of this Master Confirmation Agreement and the WSPP Agreement, the terms of this Master Confirmation Agreement shall control.

**SECTION 4
DEFINITIONS**

- (a) Section 4.1c of the WSPP Agreement is modified by including "CAISO" as an equivalent abbreviated form of the defined term "California ISO" such that the definition now reads: "4.1c California ISO (or CAISO) ..."
- (b) A new Section 4.1g shall be added in Section 4 as follows: "4.1g CAISO Firm Transaction: a transaction under Service Schedule C in which the Seller shall sell and the Purchaser shall purchase a quantity of electric energy equal to the hourly quantity, without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the CAISO Tariff, for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the CAISO Tariff) called by the CAISO in accordance with the CAISO Tariff."
- (c) A new Section 4.1h shall be added in Section 4 as follows: "4.1h CAISO Tariff the FERC approved tariff of CAISO, including all CAISO protocols, as the same may be amended from time to time."

SECTION 9
PAYMENTS

Section 9.2 of the WSPP Agreement is modified as follows: insert the phrase “in writing” after the words “designated by the Party” in the third sentence of Section 9.2.

SECTION 10
UNCONTROLLABLE FORCES

Section 10 of the WSPP Agreement is modified as follows: (i) by adding at the beginning of the section, the words “Except in connection with scheduling, delivery or receipt under a CAISO Firm Transaction,”; and (ii) deleting in its entirety the fourth sentence and replacing it with the following: “ ‘Uncontrollable Forces’ specifically excludes: (i) the loss of Purchaser’s markets or Purchaser’s inability economically to use or resell capacity and/or energy purchased under the Confirmation; (ii) the loss, failure or cost of Seller’s supply of capacity and/or energy; (iii) Seller’s ability to sell capacity and/or energy to a market at a more advantageous price; and (iv) regulatory disallowance of the pass-through of costs incurred by a Party. The Party claiming Uncontrollable Forces shall notify the Party as soon as practicable after such occurrence.”

SECTION 11
WAIVERS

Section 11 of the WSPP Agreement shall be modified by adding the following sentence at the end of the Section: “No waiver shall be deemed to have been given unless it is in writing.”

SECTION 12
NOTICES

Section 12.2 of the WSPP Agreement shall be deleted in its entirety and replaced with the following: “12.2 Any notice sent pursuant to this Section shall be considered delivered (a) when received if sent by registered or certified mail, (b) when received if sent by hand delivery, or (c) on the date of confirmation if by facsimile or telegram (except that if a notice by hand-delivery, facsimile or telegram is received after 5 p.m. at the location of receipt on a Business Day, it shall be considered to be received on the next Business Day).”

SECTION 21
LIABILITY AND DAMAGES

- (a) The third sentence of Section 21.1 of the WSPP Agreement shall be deleted in its entirety and replaced with the following: “THE LIABILITY OF THE NON-PERFORMING OR DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER DAMAGES ARE HEREBY WAIVED.”
- (b) The fourth sentence of Section 21.1 of the WSPP Agreement shall be modified by adding “21.2,” before the text “21.3”.
- (c) Section 21.1 of the WSPP Agreement shall be modified by adding the following after the fourth sentence, “Each Party shall indemnify, defend and hold harmless the other Party from and against any third-party claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to capacity and/or energy is vested in such Party, except to the extent that the claim arises from the negligence or willful misconduct of the indemnitee.”
- (d) Section 21.3(a)(1)(b) of the WSPP Agreement shall be modified by deleting the words “, if any, for firm transportation service upstream of the delivery point,”.
- (e) Section 21.3(a)(2)(b) of the WSPP Agreement shall be modified by deleting the words “, if any, for firm transportation service downstream of the delivery point,”.

- (f) Section 21.3(a)(4) of the WSPP Agreement shall be modified by replacing the language beginning with “within the billing period” through the end of the sentence, with the following: “within three (3) Business Days from the date that an invoice for such amount is received. The Performing Party may invoice the Non-Performing Party at any time following the Performing Party having incurred an amount under this Section, subject to the two-year limitation as specified in Section 9.4.”
- (g) Section 21.3(d) of the WSPP Agreement shall be modified by deleting the second and third sentences of the Section in their entirety and replacing them with “Upon resolution of the dispute, any excess amount of bills which may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest accrued at the rate set forth in Section 9.4, prorated by days from the date of overpayment to the date of refund.”
- (h) A new Section 21.3(e) is added to Section 21.3 of the WSPP Agreement as follows: “Promptly after becoming aware of each failure by the Non-Performing Party to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under a specified Confirmation, the Performing Party shall provide notice to the Non-Performing Party of such failure.”
- (i) A new Section 21.3(f) is added to Section 21.3 of the WSPP Agreement as follows: “Notwithstanding anything else in this Agreement to the contrary, the Parties agree that upon request each will consent, which consent will not be unreasonably withheld, to use good faith efforts to negotiate a book out of the Parties obligations to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under a specified Confirmation Agreement at market based prices at the time of the request. For clarity, a book out would be the entering into of an equal but opposite transaction such that neither Party would have an obligation to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under a specified Confirmation Agreement and that the Parties’ obligations would only be to make the respective payments (which would be netted in accordance with this Agreement).

SECTION 22

DEFAULT

- (a) A new Section 22.1(f) is added to Section 22 of the WSPP Agreement as follows: “An Event of Default shall also include the failure by the Defaulting Party to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under a specified Confirmation for five (5) consecutive calendar days and such failure is not excused pursuant to the product definition, this Agreement or under the terms of the specified Confirmation (e.g., an Uncontrollable Force); provided, however, if an Event of Default occurs under this Section 22.(f), the Non-Defaulting Party’s election to terminate shall be within thirty (30) days following the fifth consecutive failure to schedule, deliver, or receive capacity and/or energy or Ancillary Services or other products sold and purchased under the Specified Transaction (and if such election is not made then the option to terminate shall expire with respect to such event).”
- (b) A new Section 22.2a is added to Section 22 of the WSPP Agreement as follows:
 - “22.2a Upon any Event of Default or Potential Event of Default, the Non-Defaulting Party may, in addition to any other remedies available hereunder, suspend performance under this Agreement and under all Confirmations, *provided, however*, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Event of Default or Potential Event of Default unless a termination date shall have been declared and notice thereof pursuant to Section 22.2 given. “Potential Event of Default” means an

event which, with notice or passage of time or both, would constitute an Event of Default, provided that the failure to comply with any requirement of this Agreement, including the requirements of Section 27, or a Confirmation, before the expiration of the time period expressly specified for such compliance in this Agreement or the Confirmation (but not including any period that is provided as a cure-period for what would otherwise constitute an Event of Default), if any, shall not be considered a Potential Event of Default unless and until the applicable time period has expired without compliance.”

- (c) Section 22.3(a) of the WSPP Agreement shall be modified by deleting the language beginning with “either quoted” in the first sentence through the end of the next full sentence and inserting in its place the following: “determined by the average of the good faith quotations for the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction, solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the average shall be determined disregarding the highest and lowest quotations. If the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain quotations from at least three (3) Reference Market-makers, then the Non-Defaulting Party shall determine the Settlement Amount in a commercially reasonable manner. As used above, the term “Reference Market-maker” means any marketer, trader or seller of or dealer in firm energy products selected by the Non-Defaulting Party, not including any affiliates thereof, whose long-term unsecured senior debt, if rated, is rated BBB or better by S&P and Baa2 or better by Moody’s Investor Services, Inc. or its successor.”
- (d) Section 22.3(c) of the WSPP Agreement shall be modified by deleting, in the third sentence, the language beginning with “shall pay the remaining amount” through the end of that sentence and inserting in its place the words “shall make no Termination Payment to the other Party, and notwithstanding anything in this Agreement to the contrary, the amount by which such Gain exceeds the Losses and Costs for the purpose of this Agreement shall be deemed to be zero (0). For clarity, the Gains, Losses and Costs shall not include amounts, if any, that the Defaulting Party or the Non-Defaulting Party is obligated to pay to the other Party for products delivered or received but not yet paid for and/or the amounts owed pursuant to Section 21 of this Agreement (collectively, “Product Charges”) but it is expressly agreed that such Product Charges may, if applicable and at the election of the Non-Defaulting Party be setoff against amounts that the Non-Defaulting Party may otherwise owe the Defaulting Party pursuant to this Agreement.”
- (e) Section 22.3(e) shall be deleted in its entirety.
- (f) Section 22.3(f) shall be modified by deleting, in the second sentence, the phrase “(except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply)”.

SECTION 24 **GOVERNING LAW**

Section 24 of the WSPP Agreement shall be deleted in its entirety and replaced with the following: “This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

SECTION 28
PAYMENT NETTING

- (a) Section 28.1 of the WSPP Agreement is deleted in its entirety and replaced with the following: “The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of capacity and/or energy during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.”
- (b) Section 28.2 of the WSPP Agreement is deleted in its entirety. Furthermore, the Parties agree that Exhibit A shall not be applicable to any transaction under this Agreement.

SECTION 30
CONFIDENTIALITY

Section 30 of the WSPP Agreement shall be modified by inserting, after the phrase “(1) required by law” and before the comma, the phrase “(as reasonably determined by counsel of the disclosing Party)”.

SECTION 32
TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS

Section 32.2 of the WSPP Agreement shall be modified by inserting the following sentence at the end of the Section: “If there is any dispute relating to an oral agreement, each Party agrees that it will provide to the other Party promptly upon request any recording relating to such oral agreement.”

SECTION 34
DISPUTE RESOLUTION

Section 34 and Exhibit D of the WSPP Agreement are hereby deleted.

SECTION 35
FORWARD CONTRACTS AND OTHER REPRESENTATIONS

Section 35 of the WSPP Agreement is modified by inserting the following paragraph between the first and second sentences: “The Parties agree that each Party’s business consists in whole or in part of entering into forward contracts as or with merchants in capacity and/or energy, which is presently the subject of dealing in the forward contract trade. The parties further agree that the transactions entered into pursuant to any Confirmations hereunder (as provided in Section 22.3 of the WSPP Agreement) are forward contracts involving the sale of capacity and/or energy, which are presently the subject of dealing in the forward contract trade. No Party shall assert before any court or other governmental authority either that another Party is not, or shall not be treated as a forward contract merchant or that the transactions entered into pursuant to any Confirmations hereunder (as provided in Section 22.3 of the WSPP Agreement) are, or shall not be treated as forward contracts under the United States Bankruptcy Code.”

SECTION 37

NON-RELIANCE REPRESENTATIONS

Section 37 of the WSPP Agreement is hereby amended to add the following at the end of the Section:

“Each party will be deemed to represent to the other party on the date on which it enters into a transaction or Confirmation that (absent a written agreement between the Parties that expressly imposes affirmative obligations to the contrary for that transaction or Confirmation):

- (i) *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that transaction and Confirmation and as to whether that transaction and Confirmation is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that transaction or Confirmation; it being understood that information and explanations related to the terms and conditions of a transaction and Confirmation shall not be considered investment advice or a recommendation to enter into that transaction or Confirmation. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that transaction or Confirmation.
- (ii) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms and conditions of that transaction and Confirmation.
- (iii) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that transaction or Confirmation.
- (iv) *Eligible Contract Participant.* It is an “eligible contract participant as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended. In addition, as to NCPA, it is an agency of a government entity that, in connection with its business, is able, directly or through separate contractual arrangements, to make or take delivery of the capacity and/or energy or Ancillary Services or other products sold and purchased under the transactions to this Agreement.
- (v) *No-Speculation.* LODI hereby further represents and warrants to Counterparty that this Agreement has been, and each Confirmation Agreement hereunder has been or will be, as the case may be, entered into for the purpose of managing its borrowings or investments, hedging its underlying assets or liabilities or in connection with its line of business and not for the purpose of speculation.”

SECTION 39

AMENDMENT

Section 39.2 of the WSPP Agreement shall be deleted in its entirety and replaced with the following: “The April 1, 2008 version of the WSPP Agreement shall apply to all transactions entered into under this Master Confirmation Agreement, and no amendment to the WSPP Agreement shall apply to any transactions entered into hereunder unless Counterparty and LODI expressly agree otherwise in writing.”

SECTION 40

EXECUTION BY COUNTERPARTS

Section 40 of the WSPP Agreement shall be amended to add the following as the last sentence thereof: Facsimile signatures shall be acceptable to both Parties in proving the existence of a valid and binding agreement.

MOBILE SIERRA

The following provision is added to the WSPP Agreement:

“(a) Except as provided in subsection (b) below, absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement or any Confirmation Agreement or transaction thereunder, whether proposed by a Party, a non-party or FERC acting *sua sponte*, shall solely be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. ___ (2008) (the “Mobile-Sierra” doctrine).

(b) Notwithstanding Section (a) above, each Party hereby reserves all of its rights under the Federal Power Act, and any other applicable federal or state statutory or common law right to bring a complaint or other action against the other Party regarding this Agreement or any Confirmation Agreement or transaction entered into thereunder on the basis of fraud or market manipulation on the part of the other Party; provided, however, that such other Party first must have been determined by a non-appealable order from a court, tribunal, or regulatory body of competent jurisdiction to have acted fraudulently or to have manipulated such markets and such fraud or market manipulation must have been determined by a court, tribunal, or regulatory body of competent jurisdiction to have had (i) a direct nexus to the formation of the Confirmation Agreement or transaction in question and (ii) tainted such formation of the Confirmation Agreement or transaction. The Parties intend that any action brought pursuant to this Section (b) shall be governed by the “just and reasonable” standard specified in the Federal Power Act or such other standard of proof as may be specified by applicable federal or state law, and not the more onerous “public interest” standard specified in Section (a) above.

GUARANTY

Counterparty agrees to provide to LODI a guaranty from its ultimate parent JPMorgan Chase & Co. in the form as set forth as Exhibit A.

BILLING ADDRESSES

The billing address for LODI for the purpose of Section 9 of the WSPP Agreement shall be:

Lodi Electric Utility
1331 S. Ham Lane
Lodi, CA 95242

J.P. Morgan Ventures Energy Corporation
245 Park Ave., 11th Floor
New York, NY 10167

With Additional Notices to:
Attn: Contract Administration
Phone: (916) 781-4296
Facsimile: (916) 783-7693

With Additional Notices to:
Attn: Commodity Confirmations
Phone: 212-623-8225
Facsimile: 212-383-6600
NA.Energy.Confirmations@jpmchase.com

with a copy to:

George F. Morrow
Electric Utility Director
Lodi Electric Utility
1331 S. Ham Lane
Lodi, CA 95242
209-333-6829
209-333-1299 (fax)

Energy Legal Dept.
J.P. Morgan Ventures Energy Corporation
245 Park Ave., 11th Floor
New York, NY 10167

Invoices/Payments/Credit & Collections:

Power Accounts Administrator

(916) 781-4224/3636

(916) 781-4255 (fax)

Wire Transfer:

To be provided

Pre-scheduling:

(916) 786-0123/0124

(916) 781-4239 (fax)

Real-time/Dispatch:

(916) 786-3518/3519

(916) 781-4226 (fax)

Schedule Coordinator:

(916) 781-4237

(916) 781-4226 (fax)

Invoices/Payments/Credit & Collections:

Attn: Physical Settlements

Phone: 713-236-5200

Facsimile: 713-236-3399

NA.Energy.Settlements.physical@jpmchase.com

Wire Transfer:

ABA Routing: 021 0000 21

Bank: JPMorgan Chase Bank

For Deposit to:

J.P. Morgan Ventures Energy Corporation

Acct No. 304289361

Pre-scheduling:

(713) 236-5090

(713) 236-5000

Real-time/Dispatch:

Schedule Coordinator:

(713) 236-5090

(713) 236-5000

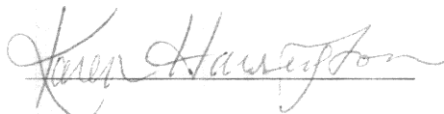
The billing address for either Party may be changed by such Party upon written notice to the other Party.

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Master Confirmation Agreement to be duly executed by its authorized officers or agents effective as of the date first above written.

**J.P. MORGAN VENTURES ENERGY
CORPORATION**

By:



Name: Karen Harrington


Title: Vice President

**LODI ELECTRIC UTILITY, CITY OF
LODI, CALIFORNIA**

Name: Blair King

Title: City Manager

APPROVED AS TO FORM:

D.  Schwabauer, City Attorney

ATTEST:


 Randi Johl, City Clerk

EXHIBIT A
GUARANTY



GUARANTEE

This GUARANTEE, dated effective as of May 27, 2009 (*this "Guarantee"*), made by JPMORGAN CHASE & CO., a Delaware corporation and multi-bank financial holding company headquartered in New York, New York (*"Guarantor"*),

WITNESSETH:

WHEREAS, Guarantor's wholly owned subsidiary J.P. Morgan Ventures Energy Corporation (*"Obligor"*) intends, from time to time, to enter into or has entered into transactions relating to emissions and emission allowances, coal, crude oil and products refined therefrom, electricity and products and services related thereto (including without limitation energy, capacity, ancillary services and products, and renewable energy credits), natural gas, natural gas liquids, and freight, including without limitation physically settled and financially settled derivative transactions with respect thereto (including, without limitation, swaps, options and forward transactions)(such types of transactions including without limitation purchases, sales, exchanges, storage, transportation and transmission and options thereon) (*each and every such transaction a "Transaction" and together, the "Transactions"*), with LODI ELECTRIC UTILITY, **CITY OF LODI, CALIFORNIA** (*the "Beneficiary"*), each such Transaction to be governed by a master agreement or other form of agreement duly executed by Obligor (*the "Transaction Documents"*), it being expressly agreed that a Transaction itself shall not be required to be in writing and may be agreed to orally, electronically and/or documented in a written confirmation or other form of agreement or may be entered into in any other manner as may be agreed to in writing by the Obligor and the Beneficiary; and

WHEREAS, the Guarantor derives substantial direct and indirect benefits from the entry by Obligor into Transactions with the Beneficiary; and

WHEREAS, this Guarantee has been executed in favor of Beneficiary, without regard to whether or not such Transactions are known or disclosed to Guarantor in advance of or following Obligor's entry into such Transactions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

- (1) **Guarantee.** Guarantor absolutely and unconditionally guarantees to Beneficiary the timely and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of Obligor to such Beneficiary under the Transactions and the Transaction Documents (*such obligations and liabilities, the "Obligations"*). If Obligor fails to pay any Obligation when due, Guarantor shall, as an independent obligation, promptly upon receiving written notice of such failure from the Beneficiary or its agent, pay such Obligation to the Beneficiary in accordance with all terms and provisions of the Transaction and all applicable Transaction Documents, as if such payment were made by the Obligor.

- (2) **Guarantee of Payment, not Collection.** This Guarantee is a guarantee of payment and not of collection. The Beneficiary shall not be required to exhaust any right or remedy or to take any action against Obligor or any other person or entity or any collateral as a condition to payment by Guarantor hereunder,
- (3) **Guarantee Irrevocable; Scope.** This Guarantee is a continuing guarantee of all Obligations now or hereafter existing, and shall remain in full force and effect until it expires in accordance with Section 8 hereof. Notwithstanding anything to the contrary contained herein, the Beneficiary shall not be deemed a Beneficiary under the Guarantees dated November 27, 2006 and February 1, 2007 and May 8, 2008 (and any amendments related thereto) issued by Guarantor to an unspecified group of Beneficiaries.
- (4) **Guarantee Absolute.** Guarantor's liability hereunder is absolute and unconditional irrespective of any matter or circumstance whatsoever with respect to the Obligations which might constitute a defense available to, or discharge of, Obligor or a guarantor, including, without limitation:
- (a) any change in the amount, time, manner or place of payment of, or in any other term of, any Obligation, or any other amendment or waiver of or any consent to departure from any terms of any Obligation;
 - (b) any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Obligation;
 - (c) any lack of validity or enforceability of any Obligation;
 - (d) any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Obligation by Obligor;
 - (e) the absence of any action to enforce any Obligation or any collateral therefor;
 - (f) the rendering of any judgment against Obligor or any action to enforce the same;
 - (g) any bankruptcy or insolvency of Obligor or any similar event or circumstance or any proceeding relating thereto;
 - (h) any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; and
 - (i) any lack or limitation of status or of power, or any incapacity or disability, of Obligor, or of any other guarantor or obligor in respect of any Obligation, or any change whatsoever in the objects, capital structure, constitution or business of Obligor.
- (5) **Waiver of Defenses.** Guarantor hereby waives diligence, presentment, demand of payment (except as provided in paragraph (1)), any right to require a proceeding against Obligor, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that this Guarantee shall not be discharged except in accordance with Section 8 hereof. The grant of time or other indulgence to Obligor shall in no manner release Guarantor from any of its obligations hereunder.

- (6) **Reinstatement.** This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Obligation is rescinded or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor or otherwise, all as though the payment had not been made.
- (7) **Subrogation.** Guarantor shall be subrogated to all rights of the Beneficiary against the Obligor in respect of any amount paid by Guarantor hereunder; *provided* that Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the Obligations to the Beneficiary shall have been finally and irrevocably paid in full.
- (8) **Expiration.** Unless earlier renewed in writing by Guarantor, this Guarantee shall expire at 3:00 pm New York Time on the fifth anniversary of the date hereof. Furthermore, Guarantor may terminate this Guarantee at any time upon twenty (20) calendar days' prior written notice to the Beneficiary, which notice shall be provided to Beneficiary in accordance with the Transaction Documents. Notwithstanding the foregoing, no such expiration or termination shall (a) affect the validity or enforceability of this Guarantee with respect to Obligations incurred by Obligor or Obligations of Obligor that relate to Transactions entered into prior to the effective date of such expiration, it being expressly agreed that such expiration shall not limit or terminate this Guarantee in respect of any Obligations arising, or relating to Transactions entered into, prior to the effectiveness of such expiration; or (b) prevent reinstatement of this Guarantee with respect to any such Obligations in accordance with Section 6 hereof.
- (9) **Representations/Warranties.** Guarantor represents and warrants to Beneficiary that, as of the date hereof and the date of entering into each Transaction:
- (a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
 - (b) It has the full power and authority to execute and deliver this Guarantee and to perform its obligations hereunder; it has taken all necessary action to authorize such execution, delivery and performance; this Guarantee has been duly executed and delivered by Guarantor; and the execution, delivery and performance of this Guarantee by the Guarantor does not contravene or constitute a default under any statute, regulation or rule of any governmental authority or under any provision of the Guarantor's certificate of incorporation or by-laws or any contractual restriction binding on the Guarantor;
 - (c) This Guarantee constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership and other similar laws affecting the rights of creditors generally, or by general principles of equity; and
 - (d) No authorization, approval or consent of, and no filing or registration with, any governmental authority is necessary for the execution, delivery or performance by Guarantor of this Guarantee or for the validity or enforceability hereof.
- (10) **Notices.** Any notice or communication required or permitted to be made under this Guarantee shall be made in the same manner and with the same effect, unless otherwise specifically provided herein, as set forth in the Transaction Documents. **All** notices and communications to the Guarantor with respect to this Guarantee, until the Beneficiary is notified to the contrary in writing, shall be sent to the Guarantor at:

JPMorgan Chase & Co.
270 Park Avenue,
New York, New York 10017-2070
Attn: Treasury Department, Regulatory and Guarantee Group- Peter W. Smith
Phone: 212-270-5815
Facsimile: 212-270-0819

All notices and communications to the Beneficiary with respect to this Guarantee, until the Guarantor is notified to the contrary in writing, shall be sent to the Beneficiary at:

LODI ELECTRIC UTILITY, CITY OF LODI, CALIFORNIA
1331 S. Ham Lane
Lodi. CA 95242
Attn: George Morrow
Phone: 209-333-6829
Facsimile: 209-333-1299

- (11) **Captions.** The headings and captions in this Guarantee are for convenience only and shall not affect the interpretation or construction of this Guarantee.
- (12) **Not Insured.** This Guarantee is not insured by the Federal Deposit Insurance Corporation of the United States of America.
- (13) **GOVERNING LAW.** THIS GUARANTEE AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS GUARANTEE SHALL BE GOVERNED BY. AND THIS GUARANTEE SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA, WITHOUT GIVING EFFECT TO CHOICE OF LAW DOCTRINE.

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

JPMORGAN CHASE & CO.

By: _____

RESOLUTION NO. 2009-85

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A MASTER CONFIRMATION
AGREEMENT WITH J.P. MORGAN VENTURES ENERGY
CORPORATION

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize (i) the City Manager to execute an Amended and Restated Master Confirmation Agreement with J.P. Morgan Ventures Energy Corporation; and (ii) the Electric Utility Director to implement and administer such agreement including any necessary confirmations related to transactions thereunder.

Dated: June 17, 2009

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I hereby certify that Resolution No. 2009-85 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 17, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Mounce, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Hitchcock and Katzakian

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk